

UNIVERSITY OF CALIFORNIA, BERKELEY

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UNIVERSITY OF CALIFORNIA, BERKELEY
2610 CHANNING WAY #2272
BERKELEY, CALIFORNIA 94720-2272

UNIVERSITY SPONSORSHIP AGREEMENT

This sets forth the agreement ("Agreement") between Bottling Group, LLC and its Affiliates and/or respective subsidiaries collectively comprising Pepsi Beverages Company, with an office located at 7550 Reese Road, Sacramento, CA 95828 ("Pepsi") and the **Regents of the University of California**, a California corporation, on behalf of the Berkeley Campus Beverage Alliance consisting of Associated Students University of California, Athletics, Residential & Student Service Programs, and Recreational Sports, with its principal place of business at 2610 Channing Way, Berkeley, CA 94720-2272 (hereinafter referred to as the "University"), with an effective date of August 4, 2011.

WHEREAS, Pepsi desires the right to be the exclusive supplier of Beverages (as defined below) to the University; and

WHEREAS, Pepsi has submitted a bid in response to an invitation to bid issued by the University for the exclusive right to develop and carry out a program for the sale of its beverage products in all the schools of the University and in specified other facilities owned or operated by the University; and

WHEREAS, Pepsi is experienced in installing, operating, servicing and maintaining equipment for dispensing beverage products and the University has determined that it is in the best interests of the University to contract with Pepsi to provide services for the sale of beverage products; and

WHEREAS, Pepsi wishes to identify itself with the University and the Teams (as defined below) and to have its products promoted and sold at the Facilities (as defined below) and further wishes to receive the other promotional benefits provided for by the University in this Agreement; and

NOW, THEREFORE, in consideration of the terms, covenants and conditions herein contained, and the other mutual promises set forth herein, the parties agree as follows:

AGREEMENT

1. DEFINITIONS.

"Affiliates" means, with respect to any person, any other natural person or "Entity" that directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such person. The term "control" (including, with correlative, meaning, the terms "controlling", "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause direction of the management and policies of a "Person", whether through the ownership of voting securities, by Contract or otherwise; provided, however, that in no event shall the University be deemed an Affiliate of Pepsi. For purposes of the definition of Affiliate, the term

“Contract” shall mean any agreement, commitment, instrument, understanding, or other contract, obligation or arrangement of any kind.

“Approved Cups” means the disposable and compostable cups approved by Pepsi from time to time as its standard trademark cups and other containers approved by Pepsi from time to time and bearing the trademark(s) of Pepsi and/or other Products. In addition, Pepsi agrees that the University shall have the right to produce limited-run commemorative plastic cups reasonably acceptable to Pepsi for use at the Facilities and that such cups shall also be considered to be Approved Cups, provided that Pepsi’s trademark(s) for Pepsi® shall be included on such commemorative cups. The use and size of Pepsi’s trademark(s) on such commemorative cups shall be subject to the prior approval of Pepsi.

“Beverage” or “Beverages” means, except as specifically set forth herein, all carbonated and non-carbonated, non-alcoholic drinks, including but not limited to, (i) colas and other flavored carbonated drinks; (ii) fruit juice, fruit juice containing and fruit flavored drinks; (iii) chilled coffee drinks; (iv) chilled tea products; (v) hypertonic, isotonic and hypotonic drinks (sports drinks and fluid replacements); (vi) energy drinks; (vii) bottled or canned water whether carbonated or still (spring, mineral or purified); and (viii) cold or frozen, carbonated or non-carbonated or naturally or artificially flavored drinks.

“Cases” shall mean the number of cases of Packaged Products purchased by the University from Pepsi, initially delivered in quantities of 24, 15, and 12 bottle/can units, and thereafter in such other size, quantity and type of containers as determined by Pepsi, from time to time.

“Competitive Products” shall mean any and all Beverages other than (i) the Products and (ii) those items listed below as Non-Competitive Beverages.

“Designations” shall include, but not be limited to, the following: “A Proud Sponsor of the [University]”, “Official Water and Soft Drink of the [University]”, “Official Sponsor of the [University] and/or other designations approved in writing by the University.

“Equipment” means the following types of equipment owned and operated by Pepsi and used to sell or dispense the Products: (a) full service vending machines (“Vending Machines”); (b) retail single-serve food service equipment and (c) fountain service equipment.

“Facilities” shall mean the entire premises of every school and facility owned, leased, occupied or operated by the University or its Food Service Provider, now and throughout the Term, including all buildings, the grounds, parking lots, dining facilities, snack bars, food carts, book stores, athletic facilities and concession stands, and, for each building, the grounds, parking, lots, dining facilities, unbranded and branded food service outlets and vending areas. Except as provided for herein, “Facilities” shall also be deemed to include any other convenience store operations and restaurants initiated during the Term of this Agreement in space leased to third-party commercial tenants within University-owned buildings principally utilized for educational purposes, student activities or student residences. University represents that the existing beverage agreements for the locations now known as Bear’s Lair and Campus Bookstore have or will soon expire; as such, Bear’s Lair and the Campus Bookstore will be included in the definition of “Facilities” and will be subject to all terms and conditions of this Agreement as of August 4, 2011, the effective date of this agreement.

“Food Service Provider” shall mean any food service provider which may serve at the Facilities at any point during the Term.

“Gallons” shall mean the number of gallons of the Postmix Products purchased by the University from Pepsi.

“Independent Operators” shall mean food service or retail providers at the Facilities currently under contract with beverage providers other than Pepsi or which are not controlled by the University as of the beginning of the Term. University commits to working aggressively in good faith to bring these venues under this Agreement when existing contracts expire or are terminated. As of the effective date of this agreement, the following, as part of the Facilities, are Independent Operators: Tang Center (Beverage/Coffee Cart), Haas School of Business (Jimmy Bean’s Restaurant), International House and all of its food service activities, University Art Museum (Café Muse), Lawrence Hall of Science food service activities, Greek Theater Concessions, Stanley Hall (Yali’s Coffee Shop), Valley Life Sciences (Yali’s Coffee Cart), Moffit Library (Free Speech Movement Café), Law School (Café Zeb) and certain Faculty Clubs.

“Non-Competitive Beverages” shall mean Meal Replacement Beverages (e.g. Slim Fast, V8), “Energy Shot” – Less than 3-ounces (e.g.. 5 Hour Energy), Yerba Mate, milk (including flavored milk), beer (alcoholic, low-alcoholic and non-alcoholic), other alcoholic beverages, tap water, Bulk Water (i.e. 5-gallon “Office Cooler” water), freshly brewed hot coffee or hot tea, hot chocolate, juice squeezed fresh, bulk juice, smoothies and milkshakes freshly blended on premises, any products used for academic research, and University-branded beverage items. Any beverages not specifically listed here that the University desires to include as Non-Competitive Beverages must be approved in writing by Pepsi. If, at any time during the Term of the Agreement, Pepsi develops and sells any products that is marketed as a Meal Replacement Beverage or Energy Shot and is sold in similar size or type packaging, then the University shall purchase only Pepsi brand Meal Replacement Beverages or Energy Shots.

“Packaged Products” shall mean Beverages that are distributed in pre-packaged form (i.e., Bottles & Cans). A current list of Pepsi’s Packaged Products is found in attached Exhibit A which may be amended by Pepsi from time to time.

“Permitted Exceptions” shall mean (i) up to fifteen percent (15%) of shelf space at the facilities (the “Generic Shelf Space”) that may be used at University discretion; *provided, however,* that Packaged Products shall be in prime positions and the Generic Shelf Space shall be in the knee-to-floor space as determined by planograms reasonably agreed to in writing by Pepsi, and further provided that in no event shall the University cause there to be served, dispensed or otherwise made available, or in any way advertised, displayed, represented or promoted in the Generic Shelf Space any Beverages licensed by, or produced by bottlers licensed by, The Coca-Cola Company or any affiliate thereof; (ii) Non-Competitive Beverages; (iii) student, faculty or administrative person who brings Beverages to the Facilities for personal consumption; (iv) Independent Operators (as defined herein); and (v) Permitted Special Events Exceptions; *provided, however,* that University shall use its best efforts to include such Independent Operators under this Agreement as soon as their existing beverage contracts expire or terminate. Further, use of the defined term “Permitted Exceptions” shall not be construed to permit the University to advertise or promote Competitive Products in connection with itself, the Teams or the Facilities in a manner inconsistent with the terms of this Agreement.

“Permitted Special Events Exceptions” shall mean events hosted by third parties unaffiliated with the University at locations such third party is using the Facilities, provided, however, that at no time during such event shall Competitive Products be sold, advertised, or promoted, including the use of signage, and no Competitive Products trademarks shall be displayed. Further, the University agrees to use reasonable efforts to preserve Pepsi’s rights under this Agreement. Upon the

completion of any such event, the third party shall be required to remove all Competitive Beverages from the applicable Facilities.

“Postmix Products” shall mean beverage products used to create and dispense fountain beverages. A current list of Pepsi’s Postmix Products is found in attached Exhibit A which may be amended by Pepsi from time to time.

“Products” shall mean Postmix Products and Packaged Products manufactured, bottled, sold and/or distributed by Pepsi.

“Teams” shall mean all intercollegiate athletic teams associated with the University.

“Team Marks” shall mean the characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations which are owned, licensed to or controlled by the University and which relate to the University and which are in existence at the beginning of the Term or which will be created during the Term, but excluding any of such marks or other rights to the extent that such rights are not controlled by the University.

“University Marks” shall mean (i) the Designations (as defined above) and (ii) the University’s characters, colors, emblems, designs, identifications, logos, mascots, name, service marks, symbols, trademarks, all trade names, uniforms and other proprietary designations which are owned, licensed to or controlled by the University and which relate to the Facilities and the Teams and which are in existence at the beginning of the Term or which will be created during the Term at the University.

“Year” shall mean each 12-month period during the Term commencing on the first day of the Term or an anniversary thereof.

2. **TERM.**

The term of this Agreement shall be for a ten (10) year period beginning on August 4, 2011 and expiring on July 31, 2021, unless sooner terminated as provided herein (“Initial Term”). Following the conclusion of the Initial Term, the University shall have the option, to extend the contract for one five (5) year time period (“Renewal Term”), unless contrary written notice is provided by either party to the other no less than ninety (90) days prior to the end of the Initial Term. In addition, the University shall have the right to extend the Agreement for one additional 120 day period for transition purposes (the “Transition Term”). Any renewals or extensions shall be under the same terms and conditions outlined herein. The Initial Term, the Renewal Term, and the Transition Term are collectively referenced herein as the “Term.”

3. **GRANT OF BEVERAGE AVAILABILITY AND MERCHANDISING RIGHTS.**

Subject to the Permitted Exceptions, during the Term, University hereby grants to Pepsi the following exclusive Beverage availability and exclusive Beverage merchandising right as set forth and described below:

A. Beverage Availability at the Facilities.

(1) Grant of Rights.

(a) Pepsi shall have the exclusive right to make Beverages available for sale and distribution throughout the Facilities, including the right to provide all Beverages sold at athletic contests (i.e., concession stands, sales in stands (hawking) or other means), booster club activities, and all other University-sponsored or controlled special events conducted at or any location on the Facilities ("Special Events"). The Products shall be the only Beverages sold, dispensed or served at the Facilities (i.e., at concession stands, sales in stands (hawking) or other means), and the Products shall be sold at all food service concession or vending locations located within the Facilities. Throughout the Term of the Agreement, Pepsi shall have the right to make available a Product mix that shall include at a minimum the following Packaged Products: Pepsi, Diet Pepsi, Sierra Mist, Mountain Dew, Dr Pepper, Crush, Gatorade, Lipton, Aquafina, Rockstar, Muscle Milk, Starbucks, Sobe Lifewater, O.N.E. Coconut Water, Ocean Spray Juice; and shall have the right to maintain a Packaged Product mix throughout the Term of the Agreement similar to the Packaged Product mix of the Fall 2011 quarter.

(b) Pepsi shall have the exclusive right to install the Equipment throughout the Facilities. Pepsi shall have the further right to install additional Equipment in facilities acquired and/or constructed by the University after the date of this Agreement. Pepsi shall install the Equipment at its sole expense. Pepsi shall have the right to place full Pepsi or affiliate trademark panels on all sides of its Equipment. Pepsi, or one of its Affiliates, shall retain title to all Equipment.

(2) Purchasing of Postmix Products.

The Postmix Products shall be purchased by University or the Food Service Provider from Pepsi at the prices established by Pepsi from time to time, except that Pepsi shall limit annual price increases to no more than three percent (3%) over the previous Year's pricing; provided however that the University, at its sole discretion, may approve price increases less than the CPI Beverage Index increase for the previous year if an increase in the cost of goods sold, including, labor, fuel, or raw materials associated with the manufacture and/or distribution of Products causes Pepsi to increase the prices for Products sold to other comparable higher education institutions by more than 3%. Upon submission of written justification from Pepsi to the University supporting such cost increase, University may, at its sole discretion, accept such price increase as of the effective date indicated in such written notice. For purposes of this Agreement (i) CPI Beverage Index means the U.S. Consumer Price Index for All Urban Consumers, Nonalcoholic Beverages and Beverage Materials, and (ii) in determining the CPI increase for the previous year, the parties shall look to the annual average percent change for the prior calendar year over the annual average percent change for the calendar year immediately preceding such prior calendar year. Current pricing for Postmix Products is as set forth in Exhibit A attached hereto

(3) Purchasing of Packaged Products.

The Packaged Products shall be purchased by University or the Food Service from Pepsi at prices established by Pepsi from time to time, except that Pepsi shall limit annual price increases to no more than three percent (3%) over the previous Year's pricing; provided however that the University, at its sole discretion, may approve price increases less than the CPI Beverage Index increase for the previous year if an increase in the cost of goods sold, including, labor, fuel, or raw materials associated with the manufacture and/or distribution of Products causes Pepsi to increase the prices for Products sold to other comparable higher education institutions by more than 3%. Upon submission of written justification from Pepsi to the University supporting such cost increase, the University may choose to accept such price increase as of the effective date indicated in such written notice. Current pricing for Packaged Products is as set forth in Exhibit A attached hereto.

(4) Food Service.

During the Term, Pepsi shall work directly with, University and the Food Service Provider for the Facilities, to provide all of its requirements for the Products. University shall cause its Food Service Provider to purchase the Product from Pepsi at prices as determined by Pepsi. The University shall cause its Food Service Provider to purchase Products from Pepsi in sufficient quantities to ensure the regular and continuous distribution of the Products at the Facilities. Pepsi shall work directly with University and its Food Service Provider to promote sales of the Products through appropriate point-of-sale and other advertising materials bearing the trademarks of the Products at Pepsi's expense. Pepsi will provide an employee or student merchandiser to make sure displays have stock on display and available for sale at all times.

(5) Vending.

(a) Pepsi shall have the right to place no less than seventy five (75) Vending Machines at the Facilities for dispensing the Products, provided, however that Pepsi shall work with University to identify optimal locations for such equipment; and provided, further, that the University shall have the right to identify existing vending machine locations for the installation of Pepsi's vending machines. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to Vending Machines.

Pepsi will be responsible for operating an effective refund procedure to ensure prompt reimbursement to individuals who have put money into Pepsi's machines and have not received a product. Pepsi will affix a sticker on each Vending Machine with instructions on how to obtain refunds.

(b) Pepsi will conduct a comprehensive review of the campus vending program at Pepsi's expense and submit a written report with recommendations on how to increase performance and maximize sales within six months after the signature date of this Agreement.

(c) On a monthly basis, Pepsi shall make all pertinent revenue and sales records respecting the Vending Machines available to the University. The University agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Vending Machines must be brought by the University within one (1) year of the date such report is provided.

Pepsi agrees the University or any of its duly authorized representatives at any time during the Term of the Agreement and upon written request by the University shall have access to, and the right to audit and examine, any pertinent books, documents, papers and records relating to the performance of the Agreement for Vending Machines.

Up to a maximum of fifty (50) Vending Machines will display a U.C. Berkeley/A.S.U.C. or U.C. Berkeley/R.S.S.P. face-front graphic and will include designated space for healthy food messaging by the University. Pepsi will provide printed graphic interior building signage, reviewed and approved by University, to direct users to vending locations.

(d) Wireless Technology. Vending Machines that are out of Product cause customer dissatisfaction and reduced return for both Pepsi and the University. This is an untenable situation that must be minimized to the greatest extent possible. Although the CBORD card system currently used by the University does not presently certify a wireless option for their card readers, Pepsi will work with the University to develop a plan to move to the use of wireless technology at the earliest commercially reasonable opportunity. The plan should include web based diagnostics that can automatically identify malfunctioning machines and also identify machines that are out-of stock in any Product

(e) Debit Card and CBORD/CAL 1 Card Technology.

(1) All machines must be capable of accepting bills or coins and giving change. Selected vending machines must be capable of accepting debit card technology and or CAL 1 Card (as described below).

(2) All vending equipment provided by Pepsi will need to conform to current University Vending standards as of the effective date of the Agreement including: Money changers, bill validation units with coin pay outs, and include all necessary equipment (installed) to render mutually selected Vending Machines fully compatible with and ready to accept existing campus CAL 1 Card card use. The University acknowledges that as of the effective date all vending equipment provided by Pepsi conformed to all applicable current University vending standards.

(3) Certain of the Vending Machines will also accept the University's CAL 1 Card (magnetic stripe). CAL 1 Card is the University's existing declining balance account accessed through the CAL 1 Card. All costs

associated with the operation of the CAL 1 Card with Vending Machines will be borne by Pepsi, provided that such Cal 1 Card readers utilize wireless technology. In the event that the University requires the Vending Machines to use wired ethernet technology, then the costs associated with connecting the Vending Machines to an ethernet network shall be borne by the University. Except as provided in the foregoing sentence, Pepsi's costs shall include, but are not limited to; purchase of proprietary CBORD card readers, maintenance costs associated with the card readers, and cost of installation and maintenance of data lines required to service Vending Machines. As of the effective date of this Agreement, the University has represented to Pepsi that there are no fees associated with the usage of the CAL 1 Card at the Facilities. The parties acknowledge and agree that if, during the Term of the Agreement, the University begins to charge a fee for the usage of the CAL 1 Card, Pepsi shall not be responsible for such fees and that such fees shall be borne by the University.

(4) Vending Machines will require the purchase and installation of a CBORD IP MDB Vending Interface Reader to accept CAL 1 Card. Pepsi and the University will mutually agree which machines, at a minimum, must operate with a vending interface reader. All fees associated with the CBORD IP MDB Vending Interface Readers initial cost, installation and annual maintenance fees will be the responsibility of Pepsi, provided that such Cal 1 Card readers utilize cellular technology. In the event that the University requires the Vending Machines to use wired ethernet technology, then the costs associated with connecting the Vending Machines to an ethernet network shall be borne by the University. The University will retain ownership of the CBORD equipment at the end of the contract period.

(5) Each Vending Machine that utilizes a CBORD IP MDB Vending Interface Reader will require one Ethernet data port on the University data network. These ports will require new wiring at each Vending Machine location, and all costs of data port installation will be the responsibility of the University. These data ports must be installed with the coordination of the UCB IT department.

(6) Up to a maximum of fifty (50) of the Vending Machines will accept both a CBORD IPMDB Vending Interface Reader and a debit card technology reader. Each Vending Machine that utilizes both a CBORD IPMDB Vending Interface Reader and a debit card technology reader will require two Ethernet data ports. It will be the responsibility of Pepsi to purchase and maintain the debit card technology readers and

the costs associated with installation on machines mutually selected by Pepsi and The University.

B. Product Merchandising Rights. Subject to the Permitted Exceptions, as applicable, during the Term and subject to the terms and conditions contained in this Agreement, University grants Pepsi the exclusive right to merchandise Products at the Facilities as set forth and described below. The parties acknowledge and agree that at no time during the Term shall Competitive Products be merchandized at the Facilities.

(1) Menu Board Advertising.

University agrees that Pepsi's trademarks for products shall be listed on the menu boards at concession locations in which Products are served to customers at the Facilities. All brand identification containing Pepsi trademarks and/or service marks for menu boards set forth herein will be prepared and installed by University at University's sole cost and expense.

(2) Approved Cups; Product Hawking and Catering.

University agrees that all Postmix Products served, sold or dispensed as fountain beverages at concession locations in which Products are served to customers at the Facilities shall be served in Approved Cups and all other Postmix Product fountain Beverages served, sold or dispensed within the Facilities shall be served in either Approved Cups or other disposable cups which do not bear, display or contain the trademarks or service marks of a manufacturer of Competitive Products. Pepsi agrees to make Approved Cups available for purchase and the University shall purchase, and shall require that all concessionaires, Food Service Providers, booster clubs and other third parties selling Beverages at the Facilities purchase all Products, cups, lids and carbon dioxide directly from Pepsi at prices reasonably determined by Pepsi. University shall cause Products to be "hawked" at the Facilities at all home games of the Teams and served as part of the catering selection in private boxes, suite, backstage areas, locker rooms and press areas. University further agrees that Postmix Products to be "hawked" in the stands shall be sold only in Approved Cups. As used herein, "hawking" shall refer to the sale of single servings of a product in the seating areas of the Facilities through the use of vendors circulating through such seating areas.

C. Berkeley Campus.

For clarification purposes, this Agreement is being entered into between the University and Pepsi with respect to the University of California Berkeley, and not with respect to any other campus, hospital, division or organization within the University. Without limiting the generality of the foregoing, the parties agree that Facilities are limited to those owned, leased, occupied or operated by or at the University of California Berkeley. Nothing in this Agreement shall be construed as giving Pepsi any rights with respect to the facilities, marks, designations, teams, and team marks of any other campus, hospital, division or organization within the University.

4. **GRANT OF ADVERTISING AND PROMOTIONAL RIGHTS.**

During the Term, University hereby grants to Pepsi the right to advertise and promote Products in and with respect to the University, the Teams and the University Marks upon the terms and conditions contained in this Agreement and as set forth and described below.

A. **Advertising.**

(1) **Facilities and Print Advertising.** Pepsi shall have the right to Facilities and print advertising as mutually agreed between the parties and as further outlined in Exhibit B.

(2) **Design and Installation of University Advertising.**

Pepsi agrees, at its own cost, to provide University with the general design of all University Advertising. The University Advertising shall be constructed and installed by University (or an agent thereof) at University's sole cost and expense. All University Advertising shall be in conformity with the general scheme and plan of the University and the surrounding areas.

(3) **Advertising/Signage Changes.**

University recognizes Pepsi's right to change, modify and alter its advertising for, or identification of, any of the Products or to discontinue the manufacture of any of the Products. Pepsi shall reimburse University for all reasonable costs and expenses incurred by University in changing or modifying or altering any Facilities Advertising, menu boards and other Pepsi identification or references to any of the Products necessitated by Pepsi's changes to the advertising, trade marks or trade names, designations or identification thereof. Pepsi shall have the right to modify, change or alter the promotional messages appearing thereon and all such modifications, changes and/or alterations shall be at Pepsi's sole cost and expense. University shall use reasonable efforts to minimize the cost to Pepsi for modifying, altering and/or changing Pepsi's advertising.

(4) **Maintenance of Signage.**

University shall maintain all Facility Advertising and other signs and advertising for Products in good order. University shall affect any necessary repairs reasonably determined by University at University's sole cost and expense. Where practical, University shall consult with Pepsi prior to incurring any material signage or other related maintenance expenses.

B. **Promotional Rights.**

(1) **General Sponsorship Designation.**

University hereby agrees that Pepsi shall have the right to promote the fact that Pepsi is an official sponsor of the Team and the University and that the Products are available at the Facilities, including the right of Pepsi to refer to itself using the Designations. Such promotion may be conducted through the distribution channels of

television, radio and print media, on the packaging of (including cups and vessels) and at the point-of-sale of any and all Products wherever they may be sold or served.

(2) Grant of License to Use the Team Marks and the University Marks for Promotional Activities.

(a) University hereby grants to Pepsi a nonexclusive license to use the name of the Team, the Facilities, the Team Marks and the University Marks, for the limited purposes of promoting Products within the context of promotional activities. Pepsi acknowledges that, in order to make full use of the rights granted in this Agreement, Pepsi shall conduct the promotional activities through its primary distribution channels in which Pepsi sells Products to the ultimate consumer, such as at the retail level, within drug stores and other retail outlets, by and through mass merchandise campaigns and together with Pepsi's food service accounts and University's. Such use shall conform to the University's trademark use guidelines and is subject to approval by the University in the manner noted herein.

(b) Pepsi shall submit product and/or artwork samples or concepts of the proposed advertisement or promotion to University for approval. University shall use its best reasonable efforts to advise Pepsi of its approval or disapproval of the sample or concept within 10 business days. Once a submitted product, sample, or concept is approved, Pepsi shall not depart therefrom in any material respect without re-submission of the item to the University and obtaining University's further approval. For goods using University and/or Team Marks, which may be used for give away or resale, Pepsi shall use a licensed vendor from among those listed at <http://ombo.berkeley.edu/name/promotion>.

C. Representations, Warranties and Covenants regarding the Ownership and Protection of the Team Marks and the University Marks and Related Proprietary Rights.

University represents and warrants that it is the sole and exclusive owner of all right, title and interests in and to the Team Marks and the University Marks (including without limitation, all goodwill associated therewith) and Pepsi's use of the Team Marks and the University Marks pursuant to this Agreement will not infringe the rights of any third parties. Pepsi acknowledges that nothing contained in this Agreement shall provide Pepsi with any right, title or interest to the Team Marks or the University Marks other than the right to use such Team Marks and University Marks granted under this Agreement. Upon expiration or termination of this agreement, Pepsi shall discontinue any and all use of the University Marks and Team Marks. Pepsi (on behalf of itself and its Affiliates) agrees that it shall not attack the title or any rights of University and its Affiliates and cooperate with University and its Affiliates to procure any protection or to protect any of the rights of University and its Affiliates in and to the Team Marks and University Marks. Pepsi shall cause to appear on all materials incorporating the Team Marks and the University Marks such legends, markings and notices as University or its Affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Team Marks and the University Marks. Pepsi shall not make any alterations or changes to the design or type of the Team Marks and University Marks without the prior written consent of University.

All uses of the University's name and trademarks must receive prior written consent of The Regents of the University of California through the Office of Marketing and Management of Trademarks. This policy is in compliance with State of California Education Code Section 92000. It is the policy of the University of California to follow the University of California Code of Conduct for Trademark Licenses, found at: <http://www.ucop.edu/ucophome/coordrev/policy/1-05-00code.pdf>.

D. Representations, Warranties and Covenants regarding the Ownership and Protection of Proprietary Rights of Pepsi.

Pepsi represents and warrants that Pepsi is authorized to use certain names, logos, service marks and trademarks of PepsiCo, Inc. (including without limitation, all goodwill associated therewith) (the "Pepsi Marks") under a license from PepsiCo, Inc. University acknowledges that nothing contained in this Agreement shall provide University with any right, title or interest to the names, logos, service marks and trademarks of PepsiCo, Inc. without the prior written approval of PepsiCo, Inc. University (on behalf of itself and its Affiliates) agrees that it shall not attack the title or any rights of PepsiCo, Inc., Pepsi and its Affiliates and cooperate with PepsiCo, Inc., Pepsi and its Affiliates to procure any protection or to protect any of the rights of PepsiCo, Inc., Pepsi and its Affiliates in and to the Pepsi Marks. University shall cause to appear on all materials incorporating the Pepsi Marks such legends, markings and notices as Pepsi or its Affiliates may request in order to give appropriate notice of any trademarks, service mark, trade name, copyright or other right with respect to the Pepsi Marks. University shall not make any alterations or changes to the design or type of the Pepsi Marks without the prior written consent of PepsiCo, Inc.

5. GRANT OF OTHER RIGHTS.

A. Sampling.

University agrees to permit Pepsi to conduct, at Pepsi's sole cost and expense, limited sampling of students at the Facilities in a form and manner as specifically authorized and approved by University and in accordance with rules and procedures established by University, in its sole discretion, as may be amended or supplemented from time to time by University.

B. Resolicitation.

It is hereby understood that the University is subject to the State of California purchasing laws. Prior to the end of the original Term or any Renewal Term, the University is required by California State Law to go out with a public bid to resolicit the beverage services contract for the ensuing term.

C. Additional Rights.

The University agrees to provide Pepsi with the additional rights set forth on Exhibit C.

6. EXCLUSIVITY.

A. Subject to the Permitted Exceptions, during the Term, University, the Team and its players, coaches and staff (i) shall not themselves nor shall they permit a third party to, sell, serve, promote, market, advertise, sponsor or endorse Competitive Products at the Facilities

other than athletic facilities, and with regard to athletic facilities shall not themselves nor shall they permit a third party to sell or serve Competitive Products, and (ii) shall ensure that the Products are the only Beverages sold, served, promoted, marketed, advertised, merchandised, sponsored or endorsed, at the Facilities other than athletic facilities, and shall ensure that the Products are the only Beverages sold or served to the public at athletic facilities. Notwithstanding the foregoing, the parties acknowledge that certain of the campus Facilities shall be permitted to utilize Generic Shelf Space for Permitted Exceptions. The Generic Shelf Space for Permitted Exceptions shall not apply to any athletic Facilities.

B. Subject to the Permitted Exceptions, during the Term, the Team and its players, coaches and staff shall not themselves nor shall they permit a third party to promote, market advertise, sponsor or endorse any Competitive Products in connection with the University, the Team, the Team Marks or any of its players, coaches and staff unless the University has offered the opportunity to Pepsi to contract for such marketing, advertising, or sponsorship opportunity on commercially reasonable terms consistent with the fair market value for such opportunity and (i) Pepsi has declined to participate in such opportunity; or (ii) Pepsi has refused to enter into a contract to participate in such opportunity on commercially reasonable terms consistent with the fair market value of such opportunity (such declining or refusal following University offering will be described herein as a "Pepsi Walkaway"). This provision shall be applicable upon the expiration of existing marketing agreements between Pepsi (or its subsidiaries) and the University with regard to Gatorade's sponsorship of the athletic sidelines and athletic Facilities set to expire in August 2012, as well Muscle Milk's sponsorship of the athletic Facilities set to expire in June 2013. Even if a Pepsi Walkaway occurs, the University may not, under any circumstances, sell, serve, promote, market advertise, merchandize, publicly sponsor or endorse Competitive Products at the Facilities other than at the athletic facilities. In the event of a Pepsi Walkaway, the University may sell marketing, promotion, and advertising opportunities that include promotional opportunities within the athletic facilities and may distribute at no cost Competitive Products of such sponsor to its Team and its players, coaches and staff. At no time shall the terms of this Section be read to apply to any other products.

C. University recognizes that Pepsi has paid valuable consideration to ensure an exclusive associational relationship with the Facilities, University, University Marks, Team Marks, and/or the Team with respect to Beverages and that any dilution or diminution of such exclusivity seriously impairs Pepsi's valuable rights. Accordingly, during the Term, the University will promptly oppose Ambush Marketing (as defined below) and take all reasonable steps to stop Ambush Marketing and to protect the exclusive associational rights granted to Pepsi pursuant to this Agreement. In the event any such Ambush Marketing occurs during the Term, each party will notify the other party of such activity immediately upon learning thereof. As used herein, "Ambush Marketing" shall mean an attempt by any third party, without Pepsi's consent, to associate Competitive Products with the Facilities, University, University Marks, Team Marks, and/or the Team, or to suggest that Competitive Products are endorsed by or associated with the Facilities, University, University Marks, Team Marks, and/or the Team by referring directly or indirectly to the Facilities, University, University Marks, Team Marks, and/or the Team in a manner inconsistent with this Agreement.

D. Limitation on Exclusivity.

Notwithstanding any provision in this Agreement to the contrary, and subject to Permitted Exceptions, Pepsi's exclusive rights shall apply only to the following categories: carbonated beverages, pure bottled water, enhanced water, energy drinks, fresh juice, juice

from concentrate, protein beverages, electrolyte/isotonic, bottled/canned coffee beverages, bottled/canned tea beverages, frozen beverages, Meal Replacement Beverages or Energy Shots or any future categories of nonalcoholic beverage products that may be manufactured, distributed or marketed by Pepsi during the Term of this Agreement.

7. **CONSIDERATION.**

In consideration for the advertising, merchandising, promotional rights, and the other related rights and benefits provided to Pepsi by University as described herein, Pepsi agrees to pay to University:

A. **An Annual Sponsorship Fee**, payable annually pursuant to the following:

Year	Applicable Time Period	Amount*	Due Date: within 45 days after:
1	August 1, 2011 – July 31, 2012	\$1,300,000	The execution of this Agreement by both parties.
2	August 1, 2012 – July 31, 2013	\$1,300,000	July 31, 2012
3	August 1, 2013 – July 31, 2014	\$1,300,000	July 31, 2013
4	August 1, 2014 – July 31, 2015	\$1,300,000	July 31, 2014
5	August 1, 2015 – July 31, 2016	\$1,300,000	July 31, 2015
6	August 1, 2016 – July 31, 2017	\$1,300,000	July 31, 2016
7	August 1, 2017 – July 31, 2018	\$1,300,000	July 31, 2017
8	August 1, 2018 – July 31, 2019	\$1,300,000	July 31, 2018
9	August 1, 2019 – July 31, 2020	\$1,300,000	July 31, 2019
10	August 1, 2020 – July 31, 2021	\$1,300,000	July 31, 2020

- The University acknowledges and agrees that each Annual Sponsorship Fee payable to the University is based on a minimum number of Units purchased from Pepsi and sold throughout the Facilities pursuant to this Agreement during the applicable Year. The minimum number of Units per Year is fifty five thousand (55,000) ("Annual Units Threshold"). As used herein, "Units" means Gallons and Cases (including Cases sold through Vending Machines). For the purposes of determining Units sold, 1 Case shall equal 1 Gallon. Therefore, if during any Year the number of Units sold by Pepsi under this Agreement, falls below the Annual Units Threshold, then the Annual Sponsorship Fee payable for the next Year will be reduced by a percentage equal to the percentage decrease between the Annual Units Threshold and the actual number of Units sold during such Year. *For example, if the Annual Sponsorship Fee is \$1,000 and the Annual Unit Threshold is 500 Units, and during Year 1 the actual Units sold is 250 Units, and then the Annual Sponsorship Fee for Year 2 will be \$500 (reduced by 50%).* In the event the Annual Sponsorship Fee is reduced, the University is responsible for providing Pepsi with a new allocation of funds based on the list below. If the University does not provide such a list, then Pepsi shall reduce all checks proportionally.
- Pepsi is responsible for keeping the Vending Machines stocked and for Product availability in all venues. If the University has actual knowledge that Pepsi has not stocked the Vending Machines or that there is a lack of Product at the Facilities, and if the University reasonably believes that such failure to stock or lack of Product might impact sales volume, then the University shall be obligated to report such failure to stock or lack of Product as soon as reasonably possible after the University obtains actual knowledge of such issue. If such failure to stock the Vending Machines or lack of Product at the Facilities is directly

Year	Applicable Time Period	Amount*	Due Date: within 45 days after:
responsible for the University's failure to meet the Annual Units Threshold, then the minimum will not apply for that Year and, in such event, the Annual Units Threshold for the affected Year shall be reduced to the extent of Pepsi's failure to stock or make Products available. The parties acknowledge and agree that nothing contained in this Section shall relieve Pepsi of its responsibilities to stock and maintain Product availability at all times during the Term.			

The Annual Sponsorship Fee is earned throughout the Year in which they are paid. In the event Pepsi terminates this Agreement due to the University's failure to cure a breach hereof after expiration of any applicable notice and cure periods, the unearned Annual Sponsorship Fees will be repaid to Pepsi pursuant to the terms of Section 10(D) herein (Sponsorship Fees in the Event of Termination).

The Annual Sponsorship Fee of \$1,300,000 will be allocated as agreed upon by the Beverage Alliance and listed below, and Pepsi will mail funds by check according to this allocation to the following addresses:

ASUC: \$352,500
 ASUC Auxiliary
 Accounts Receivable
 400 Eshleman Hall
 Berkeley, CA 94720-4500

Athletics: \$478,500
 Cal Athletics Business Office
 Attn: Josh Hummel
 University of California, Berkeley
 Athletics Department
 115 HAAS Pavilion
 Berkeley, CA 94720

Rec Sports: \$94,500
 Director of Marketing and Business Development
 Attn: Joe Watz
 University of California, Berkeley
 Department of Recreational Sports
 2301 Bancroft Avenue
 Berkeley, CA 94720-4420

RSSP: \$374,500
 RSSP Purchasing Manager
 Attn: Kurt Libby
 University of California, Berkeley
 Residential and Student Service Programs
 2610 Channing Way, MC2272
 Berkeley, CA 94720-2272

B. Marketing Funds. Pepsi shall provide the University with marketing and promotion funds (the "Marketing Funds"), payable annually pursuant to the following:

Year	Applicable Time Period	Amount	Due Date: within 45 days after:
1	August 1, 2011 – July 31, 2012	\$235,000	The execution of this Agreement by both parties.
2	August 1, 2012 – July 31, 2013	\$235,000	July 31, 2012
3	August 1, 2013 – July 31, 2014	\$235,000	July 31, 2013
4	August 1, 2014 – July 31, 2015	\$235,000	July 31, 2014
5	August 1, 2015 – July 31, 2016	\$235,000	July 31, 2015
6	August 1, 2016 – July 31, 2017	\$235,000	July 31, 2016
7	August 1, 2017 – July 31, 2018	\$235,000	July 31, 2017
8	August 1, 2018 – July 31, 2019	\$235,000	July 31, 2018
9	August 1, 2019 – July 31, 2020	\$235,000	July 31, 2019
10	August 1, 2020 – July 31, 2021	\$235,000	July 31, 2020

The Marketing Funds shall be used in part to help offset costs associated with mutually agreed upon marketing programs and promotions throughout the Term. The Marketing Funds are earned throughout the Year in which they are paid. In the event Pepsi terminates this Agreement due to the University's failure to cure a breach hereof after expiration of any applicable notice and cure periods, the unearned Marketing Funds will be repaid to Pepsi pursuant to the terms of Section 10(D) herein (Sponsorship Fees in the Event of Termination).

The Marketing Funds of \$235,000 will be allocated as agreed upon by the Beverage Alliance and listed below, and Pepsi will mail funds by check according to this allocation to the following addresses:

ASUC: \$25,000
 ASUC Auxiliary
 Accounts Receivable
 400 Eshleman Hall
 Berkeley, CA 94720-4500

Athletics: \$25,000
 Cal Athletics Business Office
 Attn: Josh Hummel
 University of California, Berkeley
 Athletics Department
 115 HAAS Pavilion
 Berkeley, CA 94720

Rec Sports: \$25,000
 Director of Marketing and Business Development
 Attn: Joe Watz
 University of California, Berkeley
 Department of Recreational Sports
 2301 Bancroft Avenue
 Berkeley, CA 94720-4420

RSSP: \$160,000
RSSP Purchasing Manager
Attn: Kurt Libby
University of California, Berkeley
Residential and Student Service Programs
2610 Channing Way, MC2272
Berkeley, CA 94720-2272

C. **Commissions**, as a percentage of the actual cash ("cash in bag" or "CIB") collected by Pepsi from the Vending Machines placed at the Facilities, less any applicable fees or deposits ("Commissions"). Such Commissions shall be at the rate(s) set forth below (the "Commission Rate") and shall be calculated as follows:

(CIB * Commission Rate) – applicable CRV = Commissions due

Product	Minimum Vend Price	Commission Rate*
Carbonated Soft Drinks	TBD by Pepsi	45%
Bottled Water	TBD by Pepsi	45%
All Other Beverages	TBD by Pepsi	30%

(1) **Commissions Payment.** Commissions shall be remitted by Pepsi to the University within thirty (30) days of the end of each 4-week accounting period established by Pepsi. Pepsi shall make all pertinent revenue and sales records respecting the Vending Machines available to University. University agrees that it is responsible for reviewing such records and that any claim or dispute relating to the Commissions must be brought by University in writing within one (1) year of the date such Commissions payment is due.

(2) **Change to Commission Rate.** University acknowledges and agrees that Pepsi established the Commission Rate based on any applicable sales tax associated with the sale of the Products through the Vending Machines as of the commencement date of this Agreement. If, during the Term, applicable sales taxes should increase by more than five percent (5%), then the parties shall split the percentage of the tax increase above five percent (5%) equally between the parties. For example, if the sales taxes should increase by eleven percent (11%), then Pepsi shall be responsible for the first five percent (5%) of the tax increase, as well as half of the remaining six percent (6%) for a total responsibility of eight percent (8%) of the tax increase. The University shall be responsible for the remaining three percent (3%) of the tax increase and such percentage shall be covered by a reduction in the Commission Rate by the same percentage amount. Thus, in the example above, the University would receive forty-two percent (42%) Commission on carbonated soft drinks and bottled water and twenty-seven percent (27%) Commissions on All Other Beverages.

8. ADDITIONAL CONSIDERATION.

In addition to the consideration specified above Pepsi shall provide the following further consideration to the University:

A. Pepsi will provide annual Product donations with a total value of up to forty thousand dollars (\$40,000) per Year across the Facilities upon request of the University, provided however, that the University will administer all requests through a central contact so that the

University may prioritize the requests. University acknowledges and agrees that donated Product requests not used/made in any Year shall not be carried over to the subsequent Year nor shall the University have the right to request any monetary amount in lieu of unused Product donations. The Product donations with a total value of up to \$40,000 will be allocated as agreed upon by the Beverage Alliance:

ASUC:	\$10,000
Athletics:	\$10,000
Rec Sports:	\$10,000
RSSP:	\$10,000

Kurt Libby or his representative designated in writing to Pepsi will be the central contact for requests and will be given access by Pepsi to regularly see the balances remaining for each of the four Beverage Alliance members listed above.

B. As mutually agreed to by The University and Pepsi, Pepsi shall provide the University with recycling bins, Dream Machines, or other items in support of a sustainability program with a value of up to fifteen thousand dollars (\$15,000) per Year (the "Sustainability Support"). The Sustainability Support items must be mutually agreed upon by University and Pepsi each Year. University acknowledges and agrees that the Sustainability Support and any value associated therewith do not represent a cash payment and any portions of the Sustainability Support not used/made in any Year shall not be carried over to the subsequent Year nor shall the Pepsi be obligated to provide any monetary amount in lieu of unused Sustainability Support.

Pepsi will work with the University to review waste reduction and recycling programs (including, but not limited to, minimization of plastic container use, recycled product use) and make ongoing operational sustainability improvements.

9. **EQUIPMENT AND SERVICE.**

A. Beverage Dispensing and Other Equipment.

(1) Pepsi shall, based upon Pepsi's survey of the Facilities' needs and at its sole cost, provide and install all Equipment at the Facilities for the dispensing of Product during the Term. Title to all Equipment shall be with Pepsi or its Affiliates, subject to Section 3(A)(5)(E) CBORD IP MDB Vending Interface Reader.

(2) Pepsi's Equipment shall comply with the requirements of the Federal 1991 Department of Justice Americans with Disabilities Act and shall carry "Energy Star" labels. Equipment will be energy and water efficient and able to go to sleep mode or low energy consumption mode whenever such practice is practicable. Pepsi will work with the University to review equipment energy and water efficiency and ongoing operational sustainability improvements.

(3) During the Term Pepsi will provide, at no charge to the University, preventative maintenance and service to the Equipment. Pepsi will service and stock, if necessary, (i) the Equipment and (ii) any additional Equipment determined by the parties to be installed at new locations on the Facilities.

(4) The Equipment may not be removed from the Campus without Pepsi's written consent, and the University agrees not to encumber the Equipment in any manner or permit other equipment to be attached thereto except as authorized by this agreement

or otherwise authorized by Pepsi. At the end of the Term, Pepsi shall have the right to, and shall upon request of the University, remove all Equipment from the Facilities at no expense to the University.

(5) Pepsi shall be responsible for collecting, for its own account, all cash monies from the Vending Machines and for all related accounting for all cash monies collected therefrom. The University agrees to provide reasonable assistance to Pepsi in apprehending and prosecuting vandals, and Pepsi agrees to report security compromises and losses incurred as a result of break-in or theft to UCPD in a timely manner.

(6) Pepsi, upon mutual agreement between the parties, may install, at Pepsi's expense in accordance with a mutually agreed to conversion schedule and at mutually agreed upon locations, University-provided "CAL 1 Readers" on Vending Machines placed at the Facilities. Vending Machines will be compatible with International Multi Drop Bus (IMDB) format. If agreed to by the parties, Vending Machines in mutually agreed locations at the Facilities will be fitted by Pepsi with credit card readers at Pepsi's expense in accordance with a mutually agreed to conversion schedule. The University's Campus I.T. Central Security Office shall have the right to approve any reader to be affixed to the Vending Machines at the Facilities. If Pepsi has agreed to such installation, then the University must comply with the following:

- (i) Pepsi will not be responsible for any transaction or maintenance fees on the CAL 1 Readers affixed to the Vending Machines;
- (ii) The University shall arrange for the collection of monies from CAL 1 transactions on Vending Machines equipped with CAL 1 Readers;
- (iii) On or before the first Monday of each month during the Term, the University and/or its authorized CAL 1 Reader agent shall be responsible for providing a monthly report to Pepsi, in a form reasonably satisfactory to Pepsi, detailing the transactions and the dollar amounts grossed during the immediately preceding monthly period through each Vending Machine equipped with a CAL 1 Reader;
- (iv) On or before the first Monday of each month during the Term, the University and/or its authorized CAL 1 Reader agent shall remit payment to Pepsi for the monies collected through CAL 1 Readers during the immediately preceding monthly period. At all times during the Term, the University shall be responsible for providing to Pepsi all monies collected through CAL 1 Readers owed to Pepsi for the sale of Pepsi products through the Vending Machines equipped with CAL 1 Readers;
- (v) The University shall retain title to the CAL 1 Readers.

(7) Pepsi reserves the absolute right to remove any glass front Vending Equipment that sells less than eight (8) cases of Product per week or any other Vending Equipment that sells less than two (2) cases of Product per week.

(8) Vending machines and other equipment installed in the Facilities shall be new or like new and models supported by Pepsi at the time of installation.

(9) Pepsi agrees to remove and destroy any compromised Products following break-ins to the Vending Machines. The parties acknowledge and agree that the Products shall only be destroyed in the event that the Vending Machine is compromised in such a way that a person could gain access to the Products and the Products shall not be destroyed if the Vending Machines are vandalized in such a way that does not expose the Products.

B. Service to Equipment.

Other than routine maintenance on fountain units and coolers, which shall be the responsibility of and completed by University or its designee, Pepsi or its designated agents shall be responsible for maintaining, repairing and replacing the Equipment. Pepsi shall provide University with a telephone number to request emergency repairs and receive technical assistance related to the Equipment. Pepsi shall respond to each University request and use reasonable efforts to remedy the related Equipment problem as soon as possible. With respect to emergency fountain related issues Pepsi shall respond within four (4) hours and will use best efforts to correct the problem within 24 hours provided that parts are available and the Equipment does not have to be entirely replaced. With respect to all other Equipment related issues, shall use best efforts to respond within eight (8) hours and will use best efforts to correct the problem within twenty-four (24) hours provided that all parts are available and the Equipment does not have to be entirely replaced.

Pepsi will be responsible for providing sufficient personnel and support services to ensure timely maintenance of vending machines to the satisfaction of the University. The machines shall be serviced frequently enough to ensure a wide selection of products are available seven days a week. In the event a vending machine cannot be maintained in a fully operational status, that machine shall be replaced with an equivalent machine to ensure continuity of vending services. All machines shall display a phone number to be used for reporting a machine that is malfunctioning/inoperable. Pepsi will be responsible to maintain its vending equipment and products in a manner consistent with acceptable vending trade practices that will enhance product marketability and ensure the maximum levels of service from all such vending equipment installed at the Facilities. To that end, Pepsi will aim to provide and install wireless monitors with web based dashboards indicating stock and maintenance to avoid out-of-stock occurrences and malfunctioning machines.

C. Pepsi shall endeavor to provide Products at the prices set forth in this Agreement as soon as practicable, as well as provide reasonable assistance, upon University's request and depending on availability, in the event of natural disaster, pandemic, inclement weather, work stoppage, or other unforeseen events affecting the University's community. In the case of a local or national emergency, Cal Dining may need to request a three day supply of bottled water, isotonic beverages, and juices. Pepsi will help Cal Dining acquire these products within a reasonable time frame if possible, depending on availability. Pepsi will provide twenty four (24) hour emergency phone numbers to RSSP, and updates to these phone numbers if they change, for use during such events. RSSP will provide Pepsi with a list of the department emergency phone numbers ("RSSP DOC phone numbers"), and updates to these phone numbers if they change, for use during such events. If, during an emergency or disaster situation, Pepsi's ability to deliver water supplies is hampered by closed or damaged roadways resulting from the disaster or Pepsi's ability to manufacture and distribute bottled water is disrupted by local plant or warehouses losing power for an extended period of time or any portion of the supply chain being seriously damaged by the natural disaster or emergency

event, then Pepsi shall not be held responsible for any failure to provide water supplies to the University. Further, this Section shall not be construed to supersede Pepsi's commitment to the safety of its employees and Pepsi will not place any employee in a situation which may jeopardize the employee's safety and well-being. Notwithstanding the foregoing, if a state of emergency is declared at the local, state or national levels, Pepsi will abide by the directions of the law enforcement officials coordinating disaster relief efforts.

D. If Pepsi, its agents or contractors cause any damage to the University's roads, infrastructure or other property and improvements (collectively "Property") in connection with this Agreement due to Pepsi's, its agents' or contractors' negligence or willful misconduct (including, without limitation, in connection with its installation or removal of Equipment), Pepsi shall repair and restore the Property to the Property's condition prior to such damage. For any requested repairs related to Pepsi's operation under this Agreement, the University shall provide written justification of why such repairs should be Pepsi's responsibility. Pepsi's work shall be of good and workmanlike quality. Pepsi shall coordinate any such work with the University, and shall comply with all University rules applicable to such work. Pepsi shall perform the repair and restoration required hereunder as soon as reasonably possible after the damage occurs, and in any event prior to the expiration of this Agreement, or within ten (10) days after the earlier termination of this Agreement. If repair and restoration is performed following the termination this Agreement, Pepsi's Insurance obligations under Section 15 shall continue until repair and restoration is completed as provided herein.

10. **REMEDIES FOR LOSS OF RIGHTS - TERMINATION.**

A. University's Termination Rights. Without prejudice to any other remedy available to University at law or in equity in respect of any event described below, this Agreement may be terminated by University at any time effective sixty (60) days following written notice to Pepsi from University if:

- (1) Pepsi fails to make any payment due hereunder, and such default shall continue for sixty (60) days after written notice of such default is delivered to Pepsi; or
- (2) Pepsi breaches or fails to perform any other material term, covenant or condition of this Agreement or any representation or warranty shall prove to have been false or misleading in any material respect and Pepsi fails to cure such breach within forty-five (45) days after written notice of default is delivered to Pepsi. If such cure cannot reasonably be accomplished within such forty-five (45) day period, this provision shall not apply where Pepsi shall have, in good faith, commenced such cure and thereafter shall diligently proceed to completion; provided, however, that such cure is completed to the reasonable satisfaction of University within ninety (90) days from the date of Pepsi's receipt of such written notice of default.

B. Pepsi's Termination Rights.

Without prejudice to any other remedy available to Pepsi at law or in equity in respect of any event described below, this Agreement may be terminated by Pepsi at any time, effective sixty (60) days following written notice to the University if (i) any of the Products are not made available as required in this Agreement by the University, their agents or concessionaires; (ii) any of the rights granted to Pepsi herein are materially restricted or limited during the Term of this Agreement in a manner that has a material impact on the volume of product that Pepsi is able to sell or otherwise restricts or limits the advertising and promotional rights granted to

Pepsi under this Agreement; (iii) the University breaches or fails to perform any other material, covenant, or condition of this agreement; or (iv) a final judicial opinion or governmental regulation prohibits the offering of Beverages at the Facilities, whether or not due to a cause beyond the reasonable control of the University, then Pepsi may give the University written notice of such event and the University shall have a ninety (90) day period within which to cure such breach. If University fails to cure such breach within a ninety (90) day period, Pepsi may terminate this Agreement and to recover from the University a reimbursement in accordance with Section (D) below (Sponsorship Fees in the Event of Termination).

C. Additional Termination Rights Available to Pepsi and University.

Without prejudice to any other right or remedy available to either party at law or in equity in respect of any event described below, this Agreement may be terminated by either party with 90 days advance notification if the other party, or any parent of such other party, shall: (1) have an order for relief entered with respect to it, commence a voluntary case or have an involuntary case filed against it under any applicable bankruptcy, insolvency or other similar law now or hereafter in effect (and such order or case is not stayed, withdrawn or settled within sixty (60) days thereafter) it is the intent of the parties hereto that the provisions of Section 365(e)(2)(A) of Title 11 of the United States Code, as amended, or any successor statute thereto, be applicable to this Agreement; or (2) file for reorganization, become insolvent or have a receiver or other officer having similar powers over it appointed for its affair in any court of competent jurisdiction, whether or not with its consent (unless dismissed, bonded or discharged within 60 days thereafter); or (3) admit in writing its inability to pay its debts as such debts become due.

D. Sponsorship Fees in the Event of Termination.

If Pepsi terminates this Agreement pursuant to Section 10 or University terminates this Agreement other than pursuant to Section 10, then Pepsi shall be entitled to payment from University, without prejudice to any other right or remedy available to Pepsi, and University shall pay to Pepsi all funding paid by Pepsi to the University under Section 7 which remains unearned as of the time of termination. With regard to the Annual Sponsorship Fee and Marketing Funds, the amount of such reimbursement shall be determined by multiplying Annual Sponsorship Fee and Marketing Funds by a fraction, the numerator of which is the number of months remaining in the Year in which the Agreement is terminated at the time such termination occurs and the denominator of which is 12. Notwithstanding the foregoing, Pepsi and the University may assign a dollar amount to each program carried on with Marketing Funds. If Pepsi and the University also agree to the time of such program, the value of such program is not subject to reimbursement after the program takes place.

11. TAXES.

University acknowledges and agrees that neither Pepsi nor its Affiliates shall be responsible for any taxes payable, fees or other tax liability incurred by the University in connection with any fees payable by Pepsi under this Agreement. In addition, Pepsi shall be responsible only for the payment of taxes on the sales of Products through Vending Machines. Pepsi shall not be assessed common area maintenance fees, taxes or other charges based on its occupation of the space allocated to its Equipment.

12. **CONFIDENTIALITY.**

A. Except as otherwise required by law, including California Public Records Act, or the rules or regulations of any national securities exchange or the rules or regulation of the University, the University and Pepsi agree not to disclose Confidential Information (as hereinafter defined) to any third party other than to their respective directors, officers, employees and agents (and directors, officers, employees and agents of their respective Affiliates) and advisors (including legal, financial and accounting advisors) (collectively, "Representatives"), as needed.

B. "Confidential Information" shall include all non-public, confidential or proprietary information that University or its Representatives make available to Pepsi or its Representatives or that Pepsi or its Representatives make available to University or its Representatives in connection with this Agreement. "Confidential Information" shall include, but not be limited to, the terms and conditions of this Agreement. It is expressly understood that the disclosure in or pursuant to this Agreement by University, Pepsi or their respective Representatives of Confidential Information is not a public disclosure thereof, nor is a sale or offer for sale of any product, equipment, process or service of University or Pepsi.

C. If a party or any of its Representatives is requested (including, without limitation, a request under the California Public Records Act), becomes legally compelled (by oral questions, requests for production of information or documents, subpoena, civil or criminal investigative demand, or similar process) or is required by a regulatory body or governmental entity to make any disclosure that is prohibited by this Agreement, the party or such Representative, as the case may be, to the extent it may legally do so, shall provide the other party with notice of such request so that such other party may seek an appropriate protective order or other appropriate remedy. Subject to the foregoing, the party or such Representative may furnish that portion (and only that portion) of the Confidential Information that the party is legally compelled or otherwise required to disclose.

D. These Confidentiality provisions and the obligations of the parties hereunder will survive the expiration or sooner termination of this Agreement for a period of three (3) years following such date of expiration or termination of this Agreement.

13. **REPRESENTATIONS, WARRANTIES AND COVENANTS.**

A. Each party represents and warrants to the other: (1) it has full power and authority to enter into this Agreement and to grant and convey to the other the rights set forth herein; and (2) all necessary approvals for the execution, delivery and performance of this Agreement have been obtained and this Agreement has been duly executed and delivered by the parties and constitutes the legal, valid and binding obligation, enforceable in accordance with its terms, and nothing contained in this Agreement violates, interferes with or infringes upon the rights of any third party; (3) the respective signatory of this Agreement is duly authorized and empowered to bind the party to the terms and conditions of this Agreement for the duration of the Term; and (4) the parties have complied with all applicable laws, ordinances, codes, rules and regulations relating to its entering into this Agreement and its performance hereunder.

B. Each of the parties hereto agree that: (1) the representations, warranties and covenants contained herein shall survive the execution and delivery of this Agreement, and (2) except as expressly set forth herein, neither party has made, and neither party is relying on, any representation or warranty, express or implied, with respect to the subject matter hereof.

C. To the extent that the Team is relocated after the date of this Agreement to a venue which is not within the Facilities as its home venue, University agrees that it shall attempt to the extent possible to ensure all rights of Pepsi hereunder shall be extended to such alternate venue as to the Team and any advertising and pouring rights contained herein. Notwithstanding the foregoing, the parties acknowledge and agree that a Team will not be utilizing the home venue for the 2011-2012 school year but that the University anticipates the Team shall be returning to the home venue beginning the first game of the 2012-2013 school year. In the event the Team is relocated and the rights granted to Pepsi under this Agreement are not extended to the venue at which the Team is playing after the 2011-2012 school year, then the parties acknowledge and agree that Pepsi has the right to renegotiate the athletic portion of the consideration to reflect the loss of such rights.

14. **INDEMNIFICATION.**

A. Pepsi will indemnify and hold the University, its Affiliates, subsidiaries, or assigns harmless from any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees), but only in proportion to and to the extent arising out of: (i) its breach of any term or condition of this Agreement; (ii) product liability suits resulting from the use or consumption of Products purchased directly from Pepsi; and/or (iii) the negligence or willful misconduct of Pepsi, (except to the extent that claims arise out of the University's negligence or willful misconduct).

B. To the extent permitted by applicable law, the University will indemnify and hold Pepsi, its subsidiaries, Affiliates or assigns harmless from and against any and all suits, actions, claims, demands, losses, costs, damages, liabilities, fines, expenses and penalties (including reasonable attorneys' fees) but only in proportion to and to the extent, arising out of (i) its breach of any term or condition of this Agreement; and/or (ii) the negligence or willful misconduct of the University (except to the extent that claims arise out of Pepsi's negligence or willful misconduct).

C. The provisions of this Section shall survive the termination of this Agreement.

15. **INSURANCE.**

A. Pepsi maintains and agrees to maintain, at all times during the Term and for a period of three (3) years thereafter, a comprehensive program of risk retention and insurance with such insurance carriers and in such amounts of insurance coverage reasonably acceptable to the other party. Pepsi agrees to name the University and each of its Affiliates, and its respective officers, directors, employees, agents, representatives and successors and assigns on a certificate of insurance, as additional insureds with respect to the certificate holder's negligence. In addition, Pepsi will require its policy issuers to endeavor to provide 30 days prior notice to the University in case of cancellation or material modification of the applicable coverage; provided, however, that delay in providing such notice shall not be a breach of the Agreement.

B. University shall have the right, during the Term from time to time, to request copies of such certificates of insurance and/or other evidence of the adequacy of the above insurance coverages.

C. Pepsi acknowledges that the University of California is self-insured for purposes of this agreement.

16. **NOTICES.**

Unless otherwise specified herein, all notices, requests, demands, consents, and other communications hereunder shall be transmitted in writing and shall be deemed to have been duly given when hand delivered, upon delivery when sent by express mail, courier, overnight mail or other recognized overnight or next day delivery service, or three (3) days following the date mailed when sent by registered or certified United States mail, postage prepaid, return receipt requested, or when deposited with a public telegraph company for immediate transmittal, charges prepaid, or by telecopier, with a confirmation copy sent by recognized overnight courier, next day delivery, addressed as follows:

If to Pepsi:

Pepsi Beverages Company
7550 Reese Road
Sacramento, CA 95828
Attn: Director, Food Service

With a copy to (which shall not constitute notice):

Pepsi Beverages Company
One Pepsi Way
Somers, NY 10589
Attn: Legal Department

If to University:

RSSP Purchasing Manager
University of California, Berkeley
Residential and Student Service Programs
2610 Channing Way, MC2272
Berkeley, CA 94720-2272
Attn: Kurt Libby

17. **ASSIGNMENT.**

This Agreement or any part hereof or interest herein shall not be assigned or otherwise transferred by either party without the prior written consent of the other party nor shall the same be assignable by operation of law, without the prior written consent of the other party; provided however, that Pepsi may assign and transfer this Agreement (in whole and not in part) to an Affiliate without the consent of, but with notice to the University; provided, however, that, (1) such Affiliate is capable of fully performing all obligations of the assignor hereunder and (2) such Affiliate agrees, under a separate agreement acceptable to the University and signed by such Affiliate, to perform all of the obligations and assume all liabilities of the assignor hereunder. Pepsi agrees that it shall not assign or transfer this Agreement to any Affiliate that has a materially lower credit worthiness than Bottling Group, LLC. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns. University represents and warrants to Pepsi that any change in the Food Service Provider at the Facilities shall not affect Pepsi's rights or obligations

hereunder. Pepsi shall remain liable for all indemnification obligations under this Agreement notwithstanding the assignment.

18. GOVERNING LAW.

This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflicts of laws principles. Any legal proceeding of any nature whatsoever brought by either party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be submitted for trial, before the Courts of the State of California, or the United States District Court having jurisdiction in the State of California. The parties consent and submit to the jurisdiction of any such court and agree to accept service of process inside or outside the State of California in any manner to be submitted to any such court pursuant thereto.

19. FORCE MAJEURE.

If the performance by either party hereto of its respective nonmonetary obligations under this Agreement is delayed or prevented in whole or in part by acts of God, fire, floods, storms, explosions, accidents, epidemics, war, civil disorder, strikes or other labor difficulties, or any law, rule, regulation, order or other action adopted or taken by any federal, state or local government authority, or any other cause not reasonably within such party's control, whether or not specifically mentioned herein, such party shall be excused, discharged and released of performance only to the extent such performance or obligation is so delayed or prevented by such occurrence without liability of any kind. Nothing contained herein shall be construed as requiring either party hereto to accede to any demands of, or to settle any disputes with, labor or labor unions, suppliers or other parties that such party considers unreasonable.

20. CODE OF CONDUCT.

During the Term, and in connection with this Agreement, Pepsi shall comply with its Worldwide Code of Conduct, as amended from time to time. The current version of the Worldwide Code of Conduct is available at <http://www.pepsico.com/Company/Worldwide-Code-of-Conduct.html>.

21. SUSTAINABILITY AND NUTRITION.

Pepsi is committed to sustainability and nutrition, as described in its Performance with Purpose document, available at http://www.pepsico.com/annual10/downloads/PepsiCo_Annual_Report_2010_Performance_with_Purpose.pdf.

22. RELEASE, DISCHARGE OR WAIVER.

No release, discharge or waiver of any provision hereof shall be enforceable against or binding upon either party hereto unless in writing and executed by both parties hereto. Neither the failure to insist upon strict performance of any of the agreements, terms, covenants or conditions hereof, nor the acceptance of monies due hereunder with knowledge of a breach of this Agreement, shall be deemed a waiver of any rights or remedies that either party hereto may have or a waiver of any subsequent breach or default in any of such agreements, terms, covenants or conditions.

23. UNIVERSITY TERMS AND CONDITIONS.

The University of California Standard Terms and Conditions of Purchase apply to this agreement. T&C's can be viewed at <http://businessservices.berkeley.edu/forms/procurement>. In the event of a conflict between the terms of this Agreement and the T&C's, the terms of this Agreement shall govern.

24. PRIOR NEGOTIATIONS; ENTIRE AGREEMENT.

This Agreement and the exhibits attached hereto, set forth the entire understanding between the parties in connection with respect to the subject matter hereof, and no statement or inducement with respect to the subject matter by either party hereto or by any agent or representative of either party hereto which is not contained in this Agreement shall be valid or binding among the parties. This provision shall not be read to invalidate or amend any other written agreements between Pepsi and/or any of its Affiliates and any Affiliate of University.

25. RELATIONSHIP OF THE PARTIES.

The parties are independent contractors with respect to each other. Nothing contained in this Agreement will be deemed or construed as creating a joint venture partnership between the parties.

26. EFFECT OF HEADINGS.

The headings and subheadings of the sections of this Agreement are inserted for convenience of reference only and shall not control or affect the meaning or construction of any of the agreements, terms, covenants and conditions of this Agreement in any manner.

27. CONSTRUCTION.

This Agreement has been fully reviewed and negotiated by the parties hereto and their respective legal counsel. Accordingly, in interpreting this Agreement, no weight shall be placed upon which party hereto or its counsel drafted the provision being interpreted. Wherever this Agreement provides for one party hereto to provide authorization, agreement, approval or consent to another party hereto, or provides for mutual agreement of the parties hereto, such authorization, approval, agreement or consent shall, except as may otherwise be specified herein, be given in writing unless otherwise mutually agreed by the parties.

28. SEVERABILITY.

If any term or provision of this Agreement shall be found to be void or contrary to law, such term or provision shall, but only to the extent necessary to bring this Agreement within the requirements of law, be deemed to be severable from the other terms and provisions hereof, and the remainder of this Agreement shall be given effect as if the parties had not included the severed term herein.

29. AMENDMENTS.

No provision of this Agreement may be modified, waived or amended except by a written instrument duly executed by each of the parties hereto. Any such modifications, waivers or amendments shall not require additional consideration to be effective.

30. **COUNTERPARTS.**

This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

31. **FURTHER ASSURANCES.**

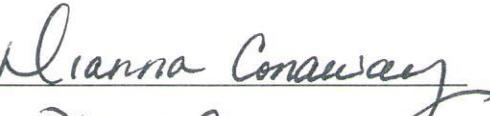
Each party hereto shall execute any and all further documents or instruments and take all necessary action that either party hereto may deem reasonably necessary to carry out the proper purposes of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be duly entered into on the date set forth below.

Regents of the University of California

By: 
Name: Ron Coley
Title: Associate Vice Chancellor
Date: May 17, 2012

Bottling Group, LLC

By: 
Name: Dianna Conaway
Title: Channel Manager
Date: 5-14-12

UCB contract
Administrator


Kurt Libby 5/18/12
RSSP Purchasing Manager

Exhibit A
Current pricing for Postmix Products and Packaged Products

University acknowledges and agrees (and shall require that any third parties or Food Service Providers purchasing Products through this Agreement agree) that Pepsi shall be entitled to pass-through any incremental fees, deposits, taxes or other governmentally imposed charges (whether local, state, federal or judicially imposed) and that the pass-through of any such governmentally imposed fees, deposits, taxes or charges on the Products shall not be deemed as a price increase subject to any pricing cap or notification restrictions that may be specified in this Agreement. The University shall determine the cost of all beverage Products sold at Facilities.

Bottle & Can Pricing

Product	Package	Units Per Case	Case Cost	Unit Cost	Retail ≤	Margin
Carbonated Soft Drinks	12 oz 8pk Cans	3	\$8.50	\$2.83	\$3.99	28.99%
	12 oz 12pk Cans	2	\$8.50	\$4.25	\$5.99	29.05%
	20 oz Plastic	24	\$16.00	\$0.67	\$1.59	58.07%
	1 Liter	15	\$12.64	\$0.84	\$1.99	57.65%
	2 Liter	8	\$8.84	\$1.11	\$1.69	34.62%
Aquafina Water	20 oz Plastic	24	\$12.69	\$0.53	\$1.39	61.96%
	1 Liter	15	\$13.89	\$0.93	\$1.69	45.21%
	1.5 Liter	12	\$12.89	\$1.07	\$1.99	46.02%
Lipton Ice Tea	20 oz Brisk	24	\$16.00	\$0.67	\$1.59	58.07%
	20 oz Natural	12	\$16.20	\$1.35	\$1.79	24.58%
	1 Liter	15	\$13.89	\$0.93	\$1.79	48.27%
	16 oz Glass	15	\$12.50	\$0.83	\$1.89	55.91%
Juice Products	20 oz Brisk	24	\$16.00	\$0.67	\$1.59	58.07%
	15.2 oz Ocean Spray	12	\$12.50	\$1.04	\$1.89	44.89%
Other Drinks	Sobe 20oz. Teas and Juices	12	\$13.39	\$1.12	\$1.89	40.96%
	Sobe Life Water 20oz. Bottles	12	\$13.39	\$1.12	\$1.89	40.96%
	9.5 oz Frappuccino	12	\$17.50	\$1.46	\$2.29	36.32%
	13.7 oz Frappuccino	12	\$20.00	\$1.67	\$2.79	40.26%
	13.8 oz Tazo Tea	12	\$15.00	\$1.25	\$1.89	33.86%
	14oz Muscle Milk	12	\$29.00	\$2.42	\$3.49	30.75%
	6.5oz Starbucks Double Shot	12	\$20.00	\$1.67	\$2.59	35.65%
	15oz Starbuck Coffee Energy	12	\$21.00	\$1.75	\$2.79	37.28%
	16 oz AMP Energy	12	\$16.00	\$1.33	\$2.49	46.45%
	16oz Rockstar Energy Drinks	24	\$32.00	\$1.33	\$2.49	46.45%
	4oz. Gatorade Prime	20	\$21.65	\$1.08	\$1.99	45.60%
	20oz Gatorade/G2/Propel	24	\$19.00	\$0.79	\$1.39	43.05%
	24oz. Gatorade	24	\$26.00	\$1.08	\$1.79	39.48%
	32oz Gatorade	15	\$19.00	\$1.27	\$2.19	42.16%
	16.9oz Coconut ONE	12	\$19.00	\$1.58	\$2.49	36.41%



Naked Juice Pricing beginning 6/2011

DESCRIPTION	PACKING	MFR UPC	PROD UPC	CS PRICE	PRICE/ PKG	SUGG RETAIL	MARGIN
NAKED JUICE							
NJ 15.2oz							
Green Machine	15.2OZ	0-82592-72015-3	72015	\$14.80	1.85	3.79	51%
Red Machine	15.2OZ	0-82592-72615-5	72615	\$14.80	1.85	3.79	51%
Blue Machine	15.2OZ	0-82592-72715-2	72715	\$14.80	1.85	3.79	51%
Power C Machine	15.2OZ	0-82592-91715-7	91715	\$14.80	1.85	3.79	51%
Berry Veggie Machine	15.2OZ	0-82592-63247-6	63247	\$14.80	1.85	3.79	51%
Mango Veggie Machine (New July 2011)	15.2OZ	0-82592-63307-8	63307	\$18.32	1.85	3.79	51%
Orange Carrot	15.2OZ	0-82592-63232-6	63232	\$14.80	1.85	3.79	51%
Mighty Mango	15.2OZ	0-82592-66015-2	66015	\$14.80	1.85	3.79	51%
Strawberry Banana C	15.2OZ	0-82592-19415-2	19415	\$14.80	1.85	3.79	51%
Berry Blast	15.2OZ	0-82592-98815-7	98815	\$14.80	1.85	3.79	51%
Orange Mango Motion	15.2OZ	0-82592-92015-7	92015	\$14.80	1.85	3.79	51%
OJ	15.2OZ	0-82592-23415-5	23415	\$14.80	1.85	3.79	51%
Reduced Calorie Peach Guava	15.2OZ	0-82592-63250-0	63250	\$14.80	1.85	3.79	51%
Reduced Calorie Tropical	15.2OZ	0-82592-63249-4	63249	\$14.80	1.85	3.79	51%
Reduced Calorie Lychee Smoothie	15.2OZ	0-82592-63312-2	63312	\$14.80	1.85	3.79	51%
Reduced Calorie Citrus Lemongrass Smoothie	15.2OZ	0-82592-63314-6	63314	\$14.80	1.85	3.79	51%
100% All Natural Brazilian Coconut Water	11.2OZ	0-82592-63255-0	63255	\$15.60	1.30	2.59	50%

TROPICANA PURE PREMIUM						
	128OZ	0-82592-23428-0	23428	\$36.00	9.00	
100% All Natural Brazilian Coconut Water Mango Peach	11.2OZ	0-82592-63326-2	63326	\$15.60	1.30	2.59
100% All Natural Brazilian Coconut Water Pineapple	11.2OZ	0-82592-63327-9	63327	\$15.60	1.30	2.59
100% All Natural Brazilian Coconut Water Lychee	11.2OZ	0-82592-63325-5	63325	\$15.60	1.30	2.59
Orange Carrot	15.2OZ	0-82592-63232-6	63232	\$14.80	1.85	3.79
Protein Zone	15.2OZ	0-82592-72215-7	72215	\$17.20	2.15	4.29
Mango Protein Zone	15.2OZ	0-82592-63228-9	63228	\$17.20	2.15	4.29
Double Berry Protein Zone	15.2OZ	0-82592-63195-4	63195	\$17.20	2.15	4.29
Acai Machine	15.2OZ	0-82592-73215-6	73215	\$17.20	2.15	4.29
Pomegranite Blueberry <u>NJ 32oz</u>	15.2OZ	0-82592-61615-9	61615	\$17.20	2.15	4.29
Mighty Mango	32OZ	0-82592-66032-9	66032	\$27.84	3.48	6.99
Green Machine	32OZ	0-82592-72032-0	72032	\$27.84	3.48	6.99
Blue Machine	32OZ	0-82592-72732-9	72732	\$27.84	3.48	6.99
Strawberry Banana C (New April 2011)	32OZ	0-82592-63320-0	63320	\$27.84	3.48	6.99
Berry Blast (New April 2011) <u>NJ 64oz</u>	32OZ	0-82592-63321-7	63321	\$27.84	3.48	6.99
OJ	64OZ	0-82592-23464-0	23464	\$30.00	5.00	6.99
Strawberry Banana C	64OZ	0-82592-19464-0	19464	\$36.00	6.00	7.99
Mighty Mango	64OZ	0-82592-66064-0	66064	\$36.00	6.00	7.99
Green Machine	64OZ	0-82592-72064-1	72064	\$36.00	6.00	7.99
Blue Machine <u>NJ 128oz</u>	64OZ	0-82592-72764-5	72764	\$36.00	6.00	7.99
Just OJ						

Pure Premium OJ (No Pulp)	12OZ	0-48500-01775-0	1775	\$11.76	0.98	1.99	51%
Lemonade	12OZ	0-48500-01866-0	1866	\$11.76	0.98	1.99	51%
Grape	12OZ	0-48500-01782-0	1782	\$11.76	0.98	1.99	51%
Grapefruit Ruby Red	12OZ	0-48500-01795-0	1795	\$11.76	0.98	1.99	51%
Trop 50 Pom/Blueberry ** New**	12oz	0-48500-01953-0	1953	\$11.76	\$0.98	1.99	51%
Trop 50 Orange ** New**	12oz	0-48500-01904-0	1904	\$11.76	\$0.98	1.99	51%
Trop 50 Rasp Lemonade ** New**	12oz	0-48500-02066-0	2066	\$11.76	\$0.98	1.99	51%
Trop 50 Lemonade ** New**	12oz	0-48500-02031-0	2031	\$11.76	\$0.98	1.99	51%

Pure Premium 59oz

PP ORANGE JUICE	59OZ	0-48500-00102-0	102	\$26.80	3.35	4.99	33%
PP OJ HOMESTYLE	59OZ	0-48500-00139-0	139	\$26.80	3.35	4.99	33%
Pure Premium 128oz							

PP 100% PURE SQUEEZED OJ Lots of Pulp

TROPICANA SHELF STABLE JUICES

Base Brand 10oz

TROP ORANGE JUICE	10OZ	0-48500-75715-0	75715	\$15.60	0.67	0.99	32%
TROP RR GRPFRT JUICE	10OZ	0-48500-75716-0	75716	\$15.60	0.67	0.99	32%
TROP APPLE JUICE	10OZ	0-48500-75717-0	75717	\$16.08	0.67	0.99	32%

12OZ Bottles

Sparkling Pomegranate	12oz	8-3609300108-8	108	\$24.00	1.00	1.99	50%
Sparkling Clementine	12oz	8-3609300105-7	105	\$24.00	1.00	1.99	50%
Sparkling Grapefruit	12oz	8-3609300104-0	104	\$24.00	1.00	1.99	50%

Sparkling Blackberry	12oz	8-3609300102-6	102	\$ 24.00	1.00	1.99	50%
Sparkling Peach	12oz	8-3609300110-0	110	\$ 24.00	1.00	1.99	50%
<u>8.4OZ CANS</u>							
Sparkling Pomegranate	8.4oz	8-3609300108-0	108	\$ 15.60	0.65	1.29	50%
Sparkling Clementine	8.4oz	8-3609300105-0	105	\$ 15.60	0.65	1.29	50%
Sparkling Apple	8.4oz	8-3609300104-0	107	\$ 15.60	0.65	1.29	50%
Sparkling Blackberry	8.4oz	8-3609300102-0	102	\$ 15.60	0.65	1.29	50%

SABRA DIPPING COMPANY

4.3OZ GRAB & GO

**Combo Case (4 each, Garlic, Classic, Red Pepper)
10OZ HUMMUS**

Classic Hummus	12/4.30z	0-40822-022209-0	2209	\$ 19.44	1.62	3.29	51%
Fresh Roasted Red Pepper Hummus	12/10oz	0-40822-01114-3	1114	\$ 30.00	2.50	4.99	50%
Roasted Garlic Hummus	12/10oz	0-40822-01154-9	1154	\$ 30.00	2.50	4.99	50%
Hummus with Roasted Pine Nuts	12/10oz	0-40822-01124-2	1124	\$ 30.00	2.50	4.99	50%
Greek Olive Hummus	12/10oz	0-40822-01174-7	1174	\$ 30.00	2.50	4.99	50%
Luscious Lemon Hummus	12/10oz	0-40822-01134-1	1134	\$ 30.00	2.50	4.99	50%
Supremely Spicy Hummus	12/10oz	0-40822-01144-0	1144	\$ 30.00	2.50	4.99	50%
Sundried Tomato Basil Hummus	12/10oz	0-40822-01473-0	1473	\$ 30.00	2.50	4.99	50%
Chipotle Hummus	12/10oz	0-40822-02754-0	2574	\$ 30.00	2.50	4.99	50%

Post Mix Product Pricing

Product	Package	Case Cost
Carbonated Soft Drinks	5 Gal	\$11.48
Non Carbonated Soft Drinks	5 Gal	\$11.48
Carbonated Soft Drinks	3 Gal	\$11.48
Non Carbonated Soft Drinks	3 Gal	\$11.48
Gatorade	3 Gal	\$14.00
Juice Tyme	1 Gal	\$28.08
Polar Shock	3 Gal	\$30.00
Lipton Tea	3 Gal	\$15.00
24 oz Cup	1,000	\$62.00
32 oz Cup	480	\$55.00
44 oz Cup	480	\$60.00
24 oz Lid	2,000	\$36.19
32 oz Lid	960	\$39.69
44 oz Lid	960	\$39.69

Exhibit B
Pepsi Advertising and Promotional Rights

During the Term, University grants the following advertising and promotional Rights to Pepsi.

1. Cal Dining

Upon mutual agreement between Pepsi and University, Pepsi will develop an annual marketing plan for Cal Dining, which will include at least the following items:

- a. Annual Cal Dining directory of services with branded opportunities.
- b. Yearly residential dining hall events.
- c. Retail dining promotions and events.

2. Associated Students

The following programs shall take place annually to promote the mutual benefit perception of the Pepsi/University partnership.

- a. Each Year during the Term, Pepsi shall have the right to logo/trademark placement in SUPERB event advertising. Such advertising rights currently reach approximately 60,000 campus and community members each year.
- b. Pepsi may agree to provide funds for A.S.U.C. Diversity and Leadership Scholarships.
- c. Pepsi shall have advertising and marketing rights in connections with A.S.U.C. Student Groups activities and programs.
- d. Pepsi may agree to provide funding support for A.S.U.C. Mini-Grants, providing financial assistance to Cal students.

Pepsi shall have the right to the following A.S.U.C. Signage. Pepsi shall develop the signage at its cost and expense and provide such signage to the University for installation:

- a. Martin Luther King, Jr. Student Union
- b. Advertising on the proposed color digital electronic sign to be installed prominently on the student union facing Bancroft Way & Telegraph Avenue, and other digital video screens throughout the new Student Union complex.

Pepsi shall have the right to have Sponsorship Recognition on the A.S.U.C. Auxiliary Web Site and Sponsorship Page

In addition, Pepsi shall have the right to the following A.S.U.C. Promotional Opportunities:

- a. A.S.U.C. SUPERB entertainment activities
- b. A.S.U.C. Tabling and Sampling at Cal Day, Calapalooza, and other events
- c. A.S.U.C. Joint Partnership opportunities with the Cal Student Store and A.S.U.C. Food Vendors
- d. A.S.U.C. Electronic Magazine Sponsor Page

3. Advancement and Marketing Initiatives

Each Year during the Term, University shall sponsor programs and events that highlight Pepsi's Product and help identify to the consumer the synergistic relationship that exists between the Pepsi and the University.

4. Recreational Sports

Pepsi shall have the right to the following benefits related to recreational sports at the Facilities; provided, however, that such benefits for any given year shall not exceed the dollar value of consideration paid to Rec Sports for such year under Section 7B of the Agreement.

Customized activations

- a. Term: annual or seasonal
- b. Program areas: Intramural Sports, Sports Clubs, Cal Adventures, Fitness Classes, Youth Programs
- c. Target: 40,000+ Cal students and non-students

Signage

- a. Locations: Recreational Sports Facility and Cal Adventures Marina
- b. Category: fixed and permanent including rotating LCD screens, sail boats and sea kayaks
- c. Number of impressions: Recreational Sports Facility – currently 5,000 annual visits per day during the academic year; Cal Adventures Marina – currently 50,000 per season

Experiential

- a. Category: annual and major events
- b. Annual: sampling provided throughout the academic year on request
- c. Major events: Caltopia and PLAYgreen Festival
- d. Sponsorship benefits: category exclusivity; signage, social media, print, sampling, online and customizable activation concepts available
- e. Number of attendees: Caltopia – currently 30,000+ and PLAYgreen Festival – currently 8,000+

Direct Email

- a. Messaging: promotional opportunities for products, programs, services, internships/careers and relevant industry news
- b. Number of email addresses: Currently over 30,000+ Cal student and campus supporters

Social Media

- a. Messaging: promotional opportunities for products, programs, services, internships/careers and relevant industry news
- b. Channels: Four (4) Facebook groups and Twitter accounts, YouTube channel and LinkedIn groups

Online Publications

- a. Messaging: promotional opportunities for products, programs, services, internships/careers and relevant industry news
- b. Publications: Two (2) departmental and three (3) event websites; monthly online newsletter
- c. Target: 40,000+ Cal students and non-students monthly

Print Publications

- a. Messaging: promotional opportunities for products, programs, services, internships/careers and relevant industry news
- b. Publications: Departmental and Youth brochures
- c. Target: 20,000+ Cal students and non-students monthly

5. Intercollegiate Athletic Sponsorship

Pepsi shall have the right to a comprehensive corporate partnership package with IMG College (or any successor of IMG College), the multimedia marketing rights holder for Cal Athletics during the Term. As such, Pepsi shall have the following benefits provided, however, that such benefits for any

given year shall not exceed the dollar value of consideration paid to Athletics for such year under Section 7B of the Agreement.

Signage

- a. Haas Pavilion – Fixed and/or digital signage (scoreboard, courtside)
- b. Memorial Stadium – Fixed and/or digital signage (scoreboard, press box, field, concourse)
- c. Evans Baseball Field – Permanent outfield wall signage
- d. Edwards Track/Soccer Stadium – Permanent scoreboard and/or temporary field signage

Media

Radio

- a. Cal Football – Six (6) station radio network
- b. Cal Basketball – Four (4) station radio network
- c. Cal Coaches' Corner Weekly Newsmagazine Show
- d. Pre-produced commercials
- e. Live reads
- f. Feature Entitlements
- g. Opening & Closing Billboards

Print

- a. Football game programs
- b. Basketball game programs
- c. Cal Sports Quarterly magazine
- d. Recognition as one of Cal's top partners. Logo will appear on the following collateral materials:
 - Will Call Envelopes
 - Posters
 - Season Ticket Brochures
 - Schedule Cards

Digital

- a. Banner campaigns, throughout the entire Cal website, www.calbears.com
- b. Website section sponsorship
- c. Use of Facebook, Twitter, etc. for promotions
- d. Email to database of 27,000 (current)

Promotional Opportunities

- a. Title/presenting Game Day sponsor (basketball and football)
- b. On-Field/On-Court promotion (basketball and football)
- c. Public address announcements during home games
- d. On-site product sampling (home athletic events/special events)
- e. Opportunity to conduct premium item giveaway
- f. Sponsor recognition on Video Board in Haas Pavilion

Tickets & Hospitality

- a. Football season tickets in ESP section of stadium (with private club access)
- b. Reserved season football tickets
- c. Reserved season basketball tickets
- d. Football and Basketball season parking passes
- e. Foursome in the annual Golden Bear Golf Tournament (Football/spring)
- f. Charter trip with Cal football team for two (2) people

Logo Rights

Use of Cal logo for promotional purposes, as approved by Cal Athletics

Exhibit C

This Document serves as a supporting document to the agreement entered into by and between Pepsi Beverages Company (Pepsi) & the University of California, Berkeley (Cal). The following assets will be provided to Pepsi by IMG College, LLC (IMG) effective as of July 1, 2012. These assets will remain in effect on an annual basis until the termination of the agreement between Pepsi and Cal, currently scheduled to terminate on July 31, 2021.

NOW, THEREFORE, for good and valuable consideration, the parties hereto hereby agree as follows:

Use of Marks

The right to use Cal Athletics' trademarks and logos to promote its sponsorship of Cal Athletics subject to the prior written approval of Cal Athletics and IMG.

Cal Athletics will work with Pepsi on a co-branded ticket sales program to utilize Pepsi assets in order to promote ticket sales for Cal Athletic events (primarily football & basketball)

Radio

- Two (2) :60-second commercial spots during each Cal Athletics football game radio broadcast on the Cal IMG Radio Network (currently 6 radio affiliates within California)
- Opening & Closing billboards during each Cal Athletics football game radio broadcast on the Cal IMG Radio Network
- One (1) feature entitlement during the post-game show of each Cal Athletics football game radio broadcast on the Cal IMG Radio Network
- Two (2) :60-second commercial spots during each Cal Athletics men's basketball game radio broadcast on the Cal IMG Radio Network game on the Cal IMG Radio Network (San Francisco, Sacramento, Modesto, Salinas)
- Opening & Closing billboards during each Cal Athletics men's basketball game radio broadcast on the Cal IMG Radio Network
- One (1) feature entitlement during each post-game Cal Athletics men's basketball game radio broadcast on the Cal IMG Radio Network

Memorial Stadium

- One (1) approximately 4' x 20' permanent, illuminated channel-cut sign on the Memorial Stadium press box
- One (1) approximately 4' x 12.5' permanent sign on the southeast corner wall pad of the Memorial Stadium Field at each Cal Athletics regular season home football game
- Two (2) real-time minutes of LED signage exposure at each Cal Athletics regular season home football game in Memorial Stadium (approx. 7 LED locations, totaling approximately 610-feet)
- Cal Athletics will work with Pepsi and stadium concessionaire to design a co-branded, integrated concession theme for the concession stands located within the main concourse, to include menu boards and additional in-concession branding

Haas Pavilion

- Minimum of two (2) game minutes of signage exposure at each Cal Athletics regular season home men's basketball game in Haas Pavilion, to be displayed in one (1) of the following locations:
 - LED courtside signage (3' x 40' LED table)
 - Player Bench courtside rotational signage (3' x 20' Rotational) behind each player bench
- Two (2) static backlit signs (6' x 9') within the "Ring of Honor" above Haas Pavilion court at each Cal Athletics regular season home game in Haas Pavilion
- Two (2) Golden Bear Partner icons within the "Ring of Honor" above Haas Pavilion court at each Cal Athletics regular season home game in Haas Pavilion
- Cal Athletics will work with Pepsi and pavilion concessionaire to design a co-branded, integrated concession theme for the concession stands located within the pavilion, to include menu boards and additional in-concession branding

Evans Diamond

- One (1) permanent scoreboard panel
- One (1) outfield wall sign (approx. 8' x 12')
- Cal Athletics will work with Pepsi to explore other branding opportunities within Evans Diamond, to possibly include left field major signage and/or press box enhancements
- Cal Athletics will work with Pepsi and stadium concessionaire to design a co-branded, integrated concession theme for the concession stand(s) located within Evans Diamond

Olympic Sports Signage

- Permanent signage to be placed in the following venues, with exact sizes & locations to be determined:
 - Levine-Fricke Field – One (1) permanent outfield wall sign
 - Spieker Aquatics Center – One (1) permanent sign on wall facing toward pool
 - Hellman Tennis Center – One (1) permanent sign on fence facing toward grandstand
 - Edwards Stadium – One (1) permanent sign on front of east grandstand, facing west grandstand

Football and Basketball Video Board

- One (1) logo recognition with a corresponding public address announcement at each Cal Athletics regular season home football, men's and women's basketball game, recognizing Pepsi as a "Foundation Partner" of Cal Athletics
- One (1) video board feature at each Cal Athletics regular season home football and men's basketball game

Men's Basketball Game Day Sponsorship

-Presenting sponsor of one (1) Cal Athletics regular season home men's basketball game (specific game to be mutually agreed upon) to include the following:

- On-court Presentation to Pepsi representatives (e.g., honorary captains & coin toss participant) at such game
- Two (2) video board logo & public address recognitions during such game
- The opportunity to distribute samples and/or a free premium item to fans at such game, with such items to be provided by Pepsi, at its cost, and subject to Cal Athletics and IMG's prior approval

Print

- One (1) Full Page, full color advertisement in the "Kickoff" Cal Athletics football game day program
- One (1) Full Page, full color advertisement in the "Tipoff" Cal Athletics basketball game day program
- Logo recognition on 40,000 Cal Athletics Basketball Schedule Cards
- Football Schedule Posters - Pepsi logo included as a "Foundation" corporate partner
- Inclusion with one (1) coupon within the "Bear Bucks" coupon book

Web Assets

- 500,000 impressions to be delivered run-of-site throughout the CalBears.com website (300x250 and 728x90 ad units with hyperlink)
- Permanent sponsorship of one (1) section of the CalBears.com website (to be mutually agreed upon)

Tickets/Hospitality

- Football Season Tickets

- Four (4) Stadium Club level tickets for each regular season home football game, to include one (1) prime parking pass and complimentary food and beverage
- Four (4) additional reserved season tickets
- Eight (8) VIP pre-game & halftime hospitality passes
- Two (2) season parking passes
- Opportunity to purchase four (4) tickets at face value for the Pac-12 Championship game and/or post-season bowl game

- Basketball Season Tickets

- Two (2) men's basketball courtside season tickets for up to five (5) home games
- Eight (8) men's basketball reserved season tickets
- Four (4) men's basketball VIP pre-game & halftime hospitality passes (Pac-12 Games Only)
- Three (3) men's basketball season parking passes
- Four (4) women's basketball season tickets
- Two (2) women's basketball season parking passes

- Four (4) Olympic Sports Passes

- Each admits two (2) adults and four (4) youth to all sports other than football & basketball

- One (1) foursome in the Gridiron Golf Tournament (held in Spring/Summer each year)

- Annual Football Charter Trip

- Charter trip for two (2) people to one (1) annual football away game. Includes:
 - Two (2) seats on the team charter
 - Two (2) hotel rooms
 - Gameday transportation
 - Two (2) game tickets

Other

- As Cal Athletics creates a design theme for the interior of the Simpson Center, if corporate identification become available, Pepsi will have right of first negotiation to acquire these assets for branding Pepsi brands

For all of the above, Pepsi will assume the cost for production, installation and maintenance of all signage included herein. There is an expectation that as signage becomes faded and/or aged, that Pepsi will assume the cost for replacing this signage.

IN WITNESS WHEREOF, the parties have agreed upon this document as of the date first written above.

PEPSI BEVERAGES COMPANY

By: Dianna Conaway
Title: Workplace Manager
Date: 5-3-12

IMG COLLEGE, LLC

By: T. J. Ryan
Title: GENERAL MANAGER
Date: 5-4-12